

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,

v.

ASHLEY YEN NGUYEN, *et al.*,

Defendants.

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Criminal Action No.: H-4:19-cr-00234-S

PARTIALLY JOINT/UNOPPOSED¹ MOTION TO CONTINUE
PRETRIAL CONFERENCE AND TRIAL

COMES NOW, the United States of America, by and through the undersigned counsel, Assistant United States Attorney Adam Laurence Goldman, and hereby files this partially unopposed/joint (*see* fn. 1) motion to continue the pretrial conference and trial to a date no earlier than in February, 2021, and in support thereof, would show the Court the following:

Presently, a Pre-Trial Conference is scheduled in this case for September 21, 2020 and trial is scheduled for September 28, 2020. However, as this Court is aware, on March 13, 2020, the President issued a national emergency proclamation concerning the novel coronavirus (covid-19) pandemic.² The Centers for Disease Control and Prevention requested that any large gatherings be cancelled.³ As part of this national emergency, various officials in both state and federal

¹ At present, 51 Defendants have pled guilty, 1 Defendant is deceased, 21 are fugitives, and 23 are currently set for trial (although the United States is in plea negotiations with 19 of them). Of those 23 remaining Defendants who have not yet pled guilty, this motion is either fully joined or unopposed by 19 of them (specifically, Defendants 2, 3, 5, 9, 11-12, 14, 16, 18, 22, 24, 31, 42, 47, 54, 59-60, 79, and 93). Counsels for 4 Defendants (specifically, Defendants 27, 44, 74, and 96) were not reached regarding their position on the instant motion. It is noted that Defendant 96 has previously been opposed to similar motions.

² <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

³ <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready->

government have requested that citizens in Houston and surrounding areas remain home. Similarly, the Houston Independent School District and surrounding school districts have cancelled classes for the next few weeks, and many employers are requesting their employees to work from home.

To that end, on March 17, 2020, United States District Courts for the Southern District of Texas, Chief Judge Lee Rosenthal, issued Special Order H-2020-6. The Court's General Order continued all Grand Jury proceedings through May 1, 2020, continued or reset all jury trials to after July 1, 2020, excluded all time from March 17, 2020 until the end of the public health concerns pursuant to 18 U.S.C. sec. 3161(h)(7)(A), and suspended and tolled all deadlines and statute of limitations through May 1, 2020. Moreover, the Court's Special Order H-2020-7 limited access to the courthouse. Likewise, Harris County has also issued a Stay-Home Order limiting travel of individuals in Harris County and directing that, per national guidance, individuals maintain social distancing of at least six feet.

Most recently, on August 10, 2020, Chief Judge Lee Rosenthal issued Special Order H-2020-22 ("Sixth Supplemental Order"), which states, in pertinent part, "[a]] jury trials (criminal and civil) scheduled to begin from this date until October 1, 2020 are continued, to a date to be reset by each presiding judge." *See* Attachment.

Therefore, in the present case, pursuant to the Court's most recent General Order regarding COVID-19, it appears that a jury trial would not be possible on the currently scheduled date as all jury trials have been continued to at least October 2, 2020.

In addition, a pretrial conference would result in over 50 individuals (attorneys, Defendants, court staff) being present in the Courtroom at the same time. Moreover, several of the attorneys are

considered to be at a higher risk level due to age and/or physical limitations. Furthermore, the limitations placed on counsels during this time (namely, counsels have been limited to telecommuting, have had their communications with their clients limited – which has limited plea discussions, and have had increased familial roles due to school closings) has limited preparation for the Pre-Trial Conference.

Furthermore, preparing for trial has been made more difficult due to the fact that the Department of Homeland Security Documents and Benefit Fraud Task Force office, which is where the files for the case are located, only recently reopened. Its extended closure limited undersigned counsel's ability to fully respond to outstanding discovery requests by the counsels for one of the Defendants.

Also, additional time will allow the United States and several of the remaining defendants who seek plea agreements to continue negotiations and finalize agreements.⁴ As previously mentioned, the shutdown of facilities has greatly limited or caused a delay in completing these matters.

The United States has discussed scheduling with several of the defense attorneys. While undersigned counsel has trials scheduled in this Court throughout October and into early November, defense counsels have indicated that they have both federal and state trials set from October through January, 2021.

Accordingly, the United States requests that pursuant to 18 U.S.C. §3161(h)(7)(A), the ends of justice are best served by the requested continuance and outweigh the interests of the public and

⁴ Of the 23 remaining defendants, the United States has drafted plea agreements for five of them, and counsels for those five defendants are currently reviewing the plea agreements with their clients. The United States also expects to send 2 more drafts of plea agreements to 2 other defendants by the end of the week.

the defendant in a speedy trial when considering the factors under 18 U.S.C. §§ 3161(h)(7)(B)(i) and 3161(h)(7)(B)(iii). This motion is not made for purposes of delay, but so that justice may be done. Denial of this request could result in a miscarriage of justice.

Therefore, for the abovementioned reasons, it is respectfully requested that the Pre-Trial Conference be reset to a date no earlier than in February, 2021.

Date: September 17, 2020

Respectfully submitted,

RYAN K. PATRICK
United States Attorney, Southern District of Texas

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CERTIFICATE OF CONFERENCE

I HEREBY CERTIFY that, as explained in footnote 1, 19 of the 23 counsels have indicated that they join in or are unopposed to the instant motion, while 4 counsels were not reached regarding their position on the instant motion (one of those counsels has previously been opposed to similar motions).

s/ Adam Laurence Goldman
Adam Laurence Goldman
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of September, 2020, I electronically filed this document with the Clerk of Court using CM/ECF and copies were mailed, faxed, e-mailed via ECF notification, or hand-delivered on the 17th day of September, 2020 to attorneys of record for the Defendants.

s/ Adam Laurence Goldman _____

Adam Laurence Goldman
Assistant United States Attorney